

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comcast Cablevision of Dallas, Inc.)	
Order Setting Basic Equipment and Installation Rates)	CSB-A-0698
Farmers Branch TX (TX0624))	
)	
Comcast of California/Colorado/Illinois/Indiana/Texas, Inc.)	
Order Setting Basic Service, Equipment and Installation Rates)	CSB-A-0699
Allen TX (TX0642))	
)	
Comcast of California/Colorado/Illinois/Indiana/Texas, Inc.)	
Order Setting Basic Equipment and Installation Rates)	CSB-A-0700
McKinney TX (TX0641))	
)	
Comcast of California/Colorado/Illinois/Indiana/Texas, Inc.)	
Order Setting Basic Service, Equipment and Installation Rates)	CSB-A-0701
Flower Mound TX (TX0840))	
)	
Comcast of Texas II, Inc.)	
Order Setting Basic Service, Equipment and Installation Rates)	CSB-A-0705
Colleyville, TX (TX0712))	
)	
Comcast of Texas II, Inc.)	
Order Setting Basic Service, Equipment and Installation Rates)	CSB-A-0707
DeSoto, TX (TX0652))	
)	
Comcast of Illinois/Texas, Inc.)	
Order Setting Basic Service, Equipment and Installation Rates)	CSB-A-0708
Grapevine, TX (TX0775))	

Comcast of Texas II, Inc.)
 Order Setting Basic Service, Equipment and) CSB-A-0710
 Installation Rates)
 Bedford, TX (TX0648))

ORDER

Adopted: June 10, 2004

Released: June 14, 2004

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. In this Order, we decide eight appeals by Comcast companies of rate orders issued by the Cities of Allen, Bedford, Colleyville, DeSoto, Farmers Branch, Flower Mound,¹ Grapevine, and McKinney, Texas.² Each appeal consists of, at least, an Appeal by each Comcast company,³ a Response or Opposition by the City⁴ that is its franchising authority, and a Reply by the Comcast company.⁵

¹ Flower Mound, Texas, is a Town but, for simplicity, will be referred to as a City.

² The term “the Cities” will be used to refer to all eight Cities or, when the context indicates, fewer of them.

³ Appeal of Local Rate Order (“Allen Appeal”) filed by Comcast of California/Colorado/Illinois/Indiana/Texas, Inc., on January 8, 2004; Appeal of Local Rate Order (“Bedford Appeal”), filed by Comcast of Texas II, Inc., on March 24, 2004; Appeal of Local Rate Order (“Colleyville Appeal”), filed by Comcast of Texas II, Inc., on March 4, 2004; Appeal of Local Rate Order (“DeSoto Appeal”), filed by Comcast of Texas II, Inc., on March 18, 2004; Appeal of Local Rate Order (“Farmers Branch Appeal”), filed by Comcast Cablevision of Dallas, Inc., on December 17, 2003; Appeal of Local Rate Order (“Flower Mound Appeal”), filed by Comcast of California/Colorado/Illinois/Indiana/Texas, Inc., on February 4, 2004; Appeal of Local Rate Order (“Grapevine Appeal”), filed by Comcast of Illinois/Texas, Inc., on March 18, 2004; Appeal of Local Rate Order (“McKinney Appeal”), filed by Comcast of California/Colorado/Illinois/Indiana/Texas, Inc., on January 14, 2004. The term “Comcast” will be used to refer to all eight companies or, when the context indicates, fewer of them. An individual Comcast company may be referred to by its City, *e.g.*, “Comcast of Allen.”

⁴ City of Allen’s Response to Comcast Cablevision of California/Colorado/Illinois/Indiana/Texas, Inc.’s Appeal of Local Rate Order (“Allen Response”), filed January 26, 2004; City of Bedford’s Response to Comcast of Texas II, Inc.’s Appeal of Local Rate Order, filed April 14, 2004; City of Colleyville Response to Comcast–Cablevision of Dallas, Inc.’s Appeal for [sic] Local Rate Order, filed May 27, 2004 (“Colleyville Response”); City of DeSoto’s Response to Comcast of Texas II, Inc.’s Appeal of Local Rate Order, filed March 30, 2004; City of Farmers Branch’s Response to Comcast Cablevision of Dallas, Inc.’s Appeal of Local Rate Order (“Farmers Branch Response”), filed January 2, 2004; Town of Flower Mound’s Opposition Pleading to Comcast Cablevision of California/Colorado/Illinois/Indiana/Texas, Inc.’s Appeal of Local Rate Order (“Flower Mound Opposition”), filed February 18, 2004; City of Grapevine’s Response to Comcast of Illinois/Texas, Inc.’s Appeal of Local Rate Order (“Grapevine Opposition”), filed April 9, 2004; City of McKinney’s Opposition Pleading to Comcast Cablevision of California/Colorado/Illinois/Indiana/Texas, Inc.’s Appeal of Local Rate Order (“McKinney Opposition”), filed January 26, 2004.

The Colleyville Response contains an Affidavit of Dianne McWelthy, Deputy City Manager, City of Colleyville, which describes the first in a series of oversights that resulted in the Colleyville Response not reaching
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2. Procedural Matters. Each appeal presents material facts and issues that are similar or identical. Accordingly, in the interests of administrative efficiency, we are deciding all the appeals in this one Order.⁶

3. Requests for stay and oppositions to those requests were filed in the Allen,⁷ Farmers Branch⁸ and McKinney⁹ appeals. Because we are deciding the merits of each of these appeals here, we dismiss the stay requests as moot.

4. In the Farmers Branch appeal, The National Association of Telecommunications Officers and Advisors (“NATOA”) submitted a letter concerning the first two substantive issues in this appeal – Comcast’s proposed prices for digital additional outlets and its proposal to charge different prices for different kinds of converter boxes. NATOA urges that these issues be resolved in future rulemakings rather than in stay requests in one or two individual rate cases.¹⁰ Comcast of Farmers Branch filed a letter opposing NATOA’s intervention and its position on the stays.¹¹

5. Because we are dismissing the stay request in the Farmers Branch appeal, we will treat NATOA’s letter as if it were addressed to our decision on the merits of the appeal by Comcast of Farmers Branch, and as requesting that we defer consideration of the merits of the issues NATOA addresses. Although we recognize the relative advantages of a rulemaking in some circumstances, it is a well-established principle that administrative agencies have discretion to proceed by either adjudication or rulemaking to decide issues that both arise in adjudicatory proceedings and could be the subjects of a rulemaking.¹² In this adjudication, we are responsible for resolving the issues presented herein. We see

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the Commission until May 27. We treat the Affidavit as a request for extension of time in which to file the Colleyville Response, and we grant that request.

⁵ Comcast of Allen’s Reply to Response to Appeal of Local Rate Order, filed on February 3, 2004; Comcast of Bedford’s Reply to Response to Appeal of Local Rate Order, filed April 22, 2004; Comcast of Colleyville’s Reply to Opposition Pleading to Appeal of Local Rate Order, filed April 19, 2004; Comcast of DeSoto’s Reply to Response to Appeal of Local Rate Order, filed April 2, 2004; Comcast of Farmers Branch Reply to Response to Appeal of Local Rate Order, filed January 9, 2004; Comcast of Flower Mound Reply to Opposition to Appeal of Local Rate Order (“Flower Mound Reply”), filed March 1, 2004; Comcast of Grapevine’s Reply to Response to Appeal of Local Rate Order (“Grapevine Reply”), filed April 15, 2004; Comcast of McKinney Reply to Opposition to Appeal of Local Rate Order (“McKinney Reply”), filed February 6, 2004.

⁶ *Frontiervision Operating Partners*, 18 FCC Rcd 20416, 20417 (2003) ¶ 3.

⁷ Comcast of Allen Request for Emergency Stay of Local Rate Order, filed on December 17, 2003; City of Allen Reply to Request for Emergency Stay, filed January 15, 2004.

⁸ Comcast of Farmers Branch Request for Emergency Stay of Local Rate Order, filed on December 5, 2003; City of Farmers Branch’s Response to Comcast Cablevision of Dallas, Inc.’s Request for Stay, filed December 29, 2003.

⁹ Comcast of McKinney’s Request for Emergency Stay of Local Rate Order, filed on January 14, 2004; City of McKinney’s Response to Comcast Cablevision of Dallas, Inc.’s Request for Stay, filed January 23, 2004.

¹⁰ Letter from Libby Beaty, Executive Director of NATOA, to Marlene H. Dortch, Commission Secretary, dated January 5, 2004.

¹¹ Letter from Steven J. Horvitz, Esq., Cole, Raywid & Braverman, L.L.P., to Marlene H. Dortch, Commission Secretary, dated January 8, 2004 (“Comcast of Farmers Branch Letter”).

¹² *Time-Warner, Inc.*, 16 FCC Rcd 6547, 6551 (2001) ¶ 7, citing *Policies & Rules for Alternative Incentive Based Regulation of Comsat Corp.*, 14 FCC Rcd 3065, 3079 (1999) ¶ 38 & n.87, citing *SEC v. Chenery Corp.*, 332 U.S.

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no compelling need to await a rulemaking, especially because the issues in question have been briefed in several separate cases. Accordingly, we deny NATOA's request and address these issues in paragraphs 15-19 below.

6. Summary. Comcast appeals from the Cities' rate orders on several grounds, including that the orders lack a written explanation for the Cities' decisions about particular rates. On this issue, we grant Comcast's appeals from the rate orders of the Cities of Allen, Colleyville, DeSoto, and Farmers Branch, and we dismiss the appeals from the rate orders of the Cities of Bedford, Flower Mound, Grapevine and McKinney. Second, two Cities complain that Comcast continued charging its increased rates after the Cities had declared them unlawful and while no stays of the Cities' decisions were in effect. Such charging is unlawful and we caution Comcast against it.

7. Concerning the substance of the Cities' rate orders, we rule herein on seven issues. First, Comcast challenges the Cities' assertion of authority over its charges for digital additional outlets. We conclude that whether each City has such authority requires further investigation, and we remand the Cities' rate orders for such proceedings. Second, Comcast challenges the Cities prohibiting Comcast from charging different prices for different kinds of converters. On this issue, we grant Comcast's appeal. Third, the Cities prohibited Comcast from annualizing ten months of actual data from AT&T Broadband on its Form 1205s, and Comcast disputes that prohibition. On this issue, too, we grant Comcast's appeal. Fourth, four Cities found Comcast's evidence of increased programming costs inadequate, and Comcast disputes their findings. We deny Comcast's appeal on this issue. Fifth, several Cities created their own inflation factor rather than using the most recent one published by the Commission, and Comcast challenges the Cities' disregard of our inflation factor. We grant Comcast's appeal on this issue. Sixth, three Cities limited Comcast's interest recovery, and the company claims that they had no rational basis to do so. We deny Comcast's appeal on this issue. Seventh, two Cities altered the period during which Comcast chose its rates to be effective, and Comcast challenges those alterations. On this issue, we grant Comcast's appeal.

II. BACKGROUND

8. The Communications Act provides that, where effective competition is absent, rates for the Basic Service Tier ("BST") and associated equipment are subject to regulation by franchising authorities.¹³ Rates for the BST and equipment should not exceed rates that would be charged by systems facing effective competition, as determined in accordance with Commission regulations for setting rates.¹⁴ If the cable operator fails to meet its burden of proof, has improperly calculated its rates, or is unresponsive to requests for relevant information, the franchising authority may use the "best information available" to review the operator's proposed rates and, if appropriate, adjust them and order refunds.¹⁵

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194, 203 (1947) ("the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency.").

¹³ 47 U.S.C. § 543(a)(2).

¹⁴ 47 U.S.C. § 543(b)(1); 47 C.F.R. § 76.922.

¹⁵ 47 C.F.R. § 76.937(d); *Falcon Classic Cable*, 15 FCC Rcd 5717, 5720 (2000) ¶ 10; *Western Reserve Cablevision, Inc.*, 14 FCC Rcd 13391, 13398 (1999) ¶ 12.

9. Rate orders issued by franchising authorities may be appealed to the Commission pursuant to Commission rules.¹⁶ In ruling on appeals of local rate orders, the Commission will not conduct a *de novo* review, but instead will sustain the franchising authority's decision as long as a rational basis for that decision exists.¹⁷ The Commission will reverse a franchising authority's rate decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules. If the Commission reverses a franchising authority's decision, it will not substitute its own decision but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal.

III. PRELIMINARY ISSUES

A. Written Explanation for the Cities' Decisions

10. Comcast challenges the Cities' rate orders on the grounds that they merely state that its proposed rates are "not reasonable" and give no rationale or explanation for that decision.¹⁸ Section 76.936 of our rules requires that a franchising authority issue a written decision in a rate case.¹⁹ Our case law has also required that the written decision affirmatively support any ruling that a cable operator's proposed rate is unreasonable.²⁰ This protects the cable operator's right to due process and gives it a basis to re-file its rate or appeal the decision to the Commission. We have repeatedly remanded franchising authorities' decisions that summarily or vaguely reject a cable operator's proposed rates.²¹ Where a franchising authority has a report prepared by a consultant whom it has retained, we have required the franchising authority's decision to do more than simply refer to the consultant's report.²²

11. We find that rate orders of the Cities of Allen, Colleyville, DeSoto, and Farmer's Branch contained less than the minimum written rationale or explanation that our rules and case law require. The rulings about all substantive issues by these three Cities are bald statements that Comcast's proposals are not reasonable, followed by prescriptions of rates, without rationale or explanation.²³ The City of Colleyville's rate order does not refer to a consultant or its writings. The rate orders of the Cities of Allen, DeSoto and Farmers Branch do refer to a consultant's recommendations or information, but neither

¹⁶ 47 U.S.C. § 543(b)(5)(B); 47 C.F.R. § 76.944.

¹⁷ *Harron Commun. Corp.*, 15 FCC Rcd 7901 (2000) ¶ 2; *Implementation of Sections of the Cable Television Consumer Protection & Competition Act*, 8 FCC Rcd 5631 (1993), 9 FCC Rcd 4316, 4346 (1994) ¶ 81.

¹⁸ *See, e.g.*, Flower Mound Appeal at 2 n.5; Grapevine Appeal at 2.

¹⁹ 47 C.F.R. § 76.936

²⁰ *See, e.g.*, *TCI of Pennsylvania, Inc.*, 18 FCC Rcd 7058, 7062-63 (2003) ¶ 20 & cases cited therein; *Marcus Cable Partners, L.L.C.*, 15 FCC Rcd 8794, 8798 (2000) ¶ 11 & cases cited therein.

²¹ *See* authorities cited *supra* note 20.

²² *Time Warner Cable*, 13 FCC Rcd 13795, 13796-97 (1998) ¶ 4 ("Although the Town references the consultant's report, the Town's Order neither explains why Time Warner's proposed rate . . . is unreasonable nor why the prescribed rate of . . . is reasonable.")

²³ Each City's rate order is Attachment A to the Appeal of its Comcast company. The City of Grapevine issued a second rate order, which is Attachment D to the Grapevine Appeal.

attaches any report by the consultant or incorporates it by reference.²⁴ The consultant's reports, in fact, are numerous, long, and cover both subjects raised in these appeals and other subjects.²⁵ To attempt to relate the rate orders of the Cities of Allen, Colleyville, DeSoto, and Farmers Branch to these reports would be laborious and speculative. The rate orders of the Cities of Bedford, Flower Mound, Grapevine, and McKinney, on the other hand, refer to a consultant and several specific reports by it, incorporate the reports by reference, and have copies of them attached.²⁶

12. To satisfy the standard of our case law that a rate order must affirmatively support any ruling that a cable operator's proposed rate is unreasonable and/or that a prescribed rate is reasonable, the order should meet one of two criteria. The first is that each ruling in the order to which a participant has objected must, within the order's four corners, contain a written explanation sufficient to support a finding by the Commission on appeal that a rational basis for the ruling exists.²⁷ The second is that an external document, such as a consultant's report, that contains such an explanation be incorporated by reference in and attached to the rate order.²⁸ It would be helpful, but may not be necessary, for the rate order to refer to the passages in any attachments that support its decisions.

13. By these criteria, the rate orders issued by the Cities of Allen, Colleyville, DeSoto, and Farmers Branch are deficient. We grant the appeals from them and we remand them for elaboration under the two criteria stated in the preceding paragraph. We dismiss Comcast's appeals on this issue from the rate orders of the Cities of Bedford, Flower Mound, Grapevine, and McKinney.

²⁴ See, e.g., DeSoto Appeal, Attachment A (City of DeSoto, Texas, Ordinance No. 1571-04) at 2, §§ 1.5 - 8.

²⁵ Comcast of Allen, for example, has attached to its Appeal approximately 30 pages written at different times by its consultant, C2 Consulting Services, Inc. Attachment B to its Appeal is a 12-page Report by the consultant, to which is attached an illegible 5-page document (evidently Comcast of Allen's Form 1205); Attachment D is a 2-page letter from the consultant; Exhibit F is a 7-page Report by the consultant; Exhibit G is a 3-page memorandum by the consultant. Attachments C and E are responses by Comcast to the consultant's documents, totaling 34 pages. Attached to the Appeals of the other Comcast companies and Cities' responses are documents of the same type and volume.

²⁶ See, e.g., Bedford Appeal at 2 & Attachment A (City of Bedford, Texas, Ordinance No. 04-2737) at 1, § 2.3; Grapevine Appeal, Attachment A (City of Grapevine, Texas, Ordinance No. 2004-07) at 2, § 2.3, Attachment D (City of Grapevine, Texas, Ordinance No. 2004-08) at 1, § 2.3.

²⁷ *Keyspan-Ravenswood, LLC v. FERC*, 348 F.3d 1053, 1058-59 (D.C. Cir. 2003) (internal quotations omitted) ("in the orders on review, the Commission did not respond to the petitioners' argument and evidence [P]ost hoc salvage operations of counsel cannot overcome the inadequacy of the Commission's explanation."); *AT&T Corp. v. FCC*, 236 F.3d 729, 734-35 (D.C. Cir. 2001) ("The reviewing court should not attempt itself to make up for [deficiencies in a commission's written decision]; we may not supply a reasoned basis for the agency's action that the agency itself has not given." Both the cases just cited relied on *SEC v. Chenery Corp.*, 332 U.S. 194, 196-97 (1947), which stated that "It will not do for a court to be compelled to guess at the theory underlying the agency's action"

²⁸ See, e.g., *Falcon Cablevision*, 16 FCC Rcd 4633, 4639 n.43 (2001) ¶ 16.

B. Compliance with Franchising Authorities' Rate Orders

14. It appears that after the Cities of Colleyville, Flower Mound and McKinney released their rate orders, finding Comcast's proposed rates for digital additional outlets unlawfully high, Comcast continued charging those proposed rates.²⁹ Comcast believes that the Cities have no authority over rates for such equipment.³⁰ In paragraph 17 below, we find that belief to be correct in some cases, perhaps including those of Colleyville, Flower Mound and McKinney. Nevertheless, when a franchising authority adopts a rate order and it takes effect, the decisions made therein are binding absent certain clearly recognized exceptions. Those are a stay of the rate order, a Commission decision granting an appeal from the rate order,³¹ or an agreement by the franchising authority and the cable operator to make other arrangements, such as continuing increased rates in effect pending an appeal. Otherwise, however, rate orders of franchising authorities are effective and binding upon cable operators upon their release.³²

IV. SUBSTANTIVE ISSUES

A. Charge for "Digital Additional Outlet"

15. A "digital additional outlet" is equipment that Comcast supplies only to a subscriber to digital cable service. Through this outlet the subscriber receives both the BST and other programming.³³ The Cities regulate rates for the basic tier of cable service and associated equipment,³⁴ but have no authority over other programming and equipment. In each rate order here under review, the City found Comcast's proposed charge for digital additional outlets unreasonable and prescribed a charge of zero for them.³⁵ The Cities state that Comcast's filings made no attempt to justify its proposed charge.³⁶ Comcast, however, takes the position that the Cities have no authority over digital additional outlets.

²⁹ Colleyville Opposition at 3, 6; Flower Mound Opposition at 3, 5-6; McKinney Opposition at 2, 5-6. It appears that this occurred briefly in Farmers Branch but was corrected promptly by Comcast of Farmers Branch. Letter from Dick Kirby, Comcast Cable Commun., Inc., to Ms. Margaret Somereve, City of Farmers Branch, dated January 7, 2004, which is Exhibit A to Comcast of Farmers Branch Letter, *supra* note 11.

³⁰ Flower Mound Appeal at 2-5; McKinney Appeal at 2-6.

³¹ 47 C.F.R. § 76.933(g)(2) (speaking of "subject to a prospective rate reduction and refund if the franchising authority subsequently issues a written decision disapproving any portion of such rates").

³² *See, e.g.*, 47 CFR § 76.10 (c)(2) ("unless a stay is granted by the Commission, the decision by the administrative law judge will become effective upon release and will remain in effect pending appeal."); *TCI of Pennsylvania, Inc.*, Memorandum Opinion & Order DA 04-1496 at ¶ 9, rel. May 26, 2004, available at 2004 WL 1161509 ("Neither TCI's appeal of the order nor its request for a stay renders the order unenforceable."); *Mickelson Media, Inc., d/b/a/ Adelphia Cable Commun.*, 15 FCC Rcd 13311, 13314-13 (2000) ¶ 7 ("absent a stay, cable operators are expected to comply with valid rate orders when issued").

³³ *See, e.g.*, Flower Mound Appeal at 3 n.7; Flower Mound Opposition at 5; Flower Mound Reply at 2.

³⁴ 47 U.S.C. § 543(a)(2)(A). Concerning rates for outlets in particular, see 47 C.F.R. § 76.923 (a, h).

³⁵ *See, e.g.*, Bedford Appeal at 2 & Attachment A (City of Bedford Ordinance No. 04-2737) at 2, §§ 2.3, 3.3; Farmers Branch Appeal at 2 & Attachment A (City of Farmers Branch, Texas, Ordinance No. 2748) at 2-3, §§ 2.3, 3.3.

³⁶ *See, e.g.*, Flower Mound Opposition at 4.

16. Generally, an outlet through which the BST passes is subject to regulation by the franchising authority, regardless of what other programming also passes through it.³⁷ There is an exception to the general rule, however.³⁸ (The exception dates from the time when the Commission had authority over the Cable Programming Service Tier (“CPST”).) The exception is that the Commission and not the franchising authority had authority over the price of an additional outlet where the cable operator showed that the price for the additional outlet in question was based on the cost of obtaining the CPST programming that passed through the additional outlet. With the deregulation of CPST programming,³⁹ the price of those additional outlets was also deregulated.

17. Consistent with these precedents, the Cities have authority over Comcast’s digital additional outlets unless Comcast can show that its proposed price for those outlets covers the costs of its non-BST programming and no other costs. We remand the rate orders of all the Cities in order to give Comcast an opportunity to make such a showing to each City. If Comcast makes such a showing to a

³⁷ *Falcon Cablevision*, 13 FCC Rcd 16847, 16849 (1998) ¶ 6 (“all equipment used to receive the basic service tier . . . is subject to regulation by the LFA. If subscribers obtain both the BST and unregulated programming on the outlet for which Operator imposes an additional outlet charge, the LFA has jurisdiction to determine the reasonableness of Operator’s additional outlet charges.”); *Falcon Cablevision d/b/a/ Falcon First, Inc.*, 13 FCC Rcd 16814, 16815 (1998) ¶ 5, *affirmed*, 14 FCC Rcd 7098, 7101 (1999) ¶ 11; *Falcon Cablevision*, 12 FCC Rcd 23500, 23502 (1997) ¶ 7; *Monmouth Cablevision Associates*, 10 FCC Rcd 7764, 7765 (1995) ¶ 5; *Community Cablevision Co.*, 10 FCC Rcd 5115, 5116-17 (1995) ¶ 9.

³⁸ *Warner Cable Commun., Inc.*, 10 FCC Rcd 9966, 9969-70 (1995) states at ¶ 19:

“Because most equipment-related charges imposed on the CPS tier are also imposed on the basic tier, local franchising authorities almost always regulate such charges. In rare instances, however, certain equipment-related charges may be related only to the CPS tier, such as additional programming costs for channels only carried on the CPS tier, placing the charges under Commission jurisdiction. . . . Because the additional outlet charges are imposed only in connection with programming carried on the CPS tier, the Commission, not the City, has jurisdiction over this matter.”

Accord, *Community Cablevision Co.*, 10 FCC Rcd 5115, 5516-17 (1995) ¶ 9; *Times Mirror Cable Television of Orange County, Inc.*, 10 FCC Rcd 4011, 4012 (1995) ¶ 9; *Times Mirror Cable Television of Orange County, Inc.*, 10 FCC Rcd 845, 852 (1994) ¶ 9 (“Dimension’s additional outlet charge falls within the jurisdiction of the Commission because it is imposed only on CPS subscribers and it allegedly relates solely and directly to the cost of programming that is transmitted on the CPS tier.”). *See also Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992*, 9 FCC Rcd 1164, 1193-95 (1993) ¶ 52 (“a cable operator is permitted to recover additional charges, through a monthly charge limited to the operator’s additional programming costs, for programming it transmits to additional outlets.”), ¶¶ 53-54; *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992*, 8 FCC Rcd 5631, 5824 (1993) ¶ 307 (footnote omitted and brackets added):

“We disagree with commenters who argue that Section 623(b)(3) [47 U.S.C. § 543(b)(3)] does not address the programming portion of additional connections. The statute specifically covers the ‘monthly use’ of additional connections. . . . [I]f an operator incurs additional charges for programming carried on basic or cable programming channels that it transmits to additional outlets, those charges would be properly recovered through a monthly charge levied for additional outlets in fact receiving that programming. That monthly charge would be limited to the operator’s additional programming costs.”

³⁹ 47 U.S.C. §543 (c)(4).

City, then that City lacks authority over the price of Comcast's digital additional outlets. If Comcast cannot make such a showing, then the City's assertion of authority over the price of its digital additional outlets was lawful. We note that, in that circumstance, Comcast may be entitled to establish a cost-based charge for its digital additional outlets.⁴⁰

B. Uniform Rate for HDTV and Standard Converter Boxes

18. Section 623(a)(7)(A) of the Communications Act of 1934, as amended,⁴¹ allows cable operators to aggregate the costs of equipment, including converter boxes, into broad categories for purposes of regulatory filings such as Form 1205. From the aggregated costs, the cable operator derives a Maximum Permitted Rate ("MPR") for equipment in the aggregated category. Comcast has put into one category both its standard non-basic converters and its High Definition TV (HDTV)-capable converters. In Comcast's filings with the Cities, the MPR for these converters was over \$9.00.⁴² In the same filings, Comcast proposed to charge different prices for standard and HDTV-capable converters – \$4.80 and \$5.00,⁴³ respectively. The Cities rejected the higher price for HDTV-capable converters and ordered Comcast to charge only \$4.80 for both kinds of converters.⁴⁴

19. The statute and Commission decisions⁴⁵ and regulations⁴⁶ permit a cable operator to aggregate equipment costs. The cable operator, however, is under no specific obligation to charge the same price for each item of equipment that, on its Form 1205, is aggregated. We can discern no reason for requiring such uniformity in this case.⁴⁷ Congress and the Commission allowed cable operators to aggregate equipment costs in order to promote the development of a broadband, two-way telecommunications infrastructure, to reduce the cost of advanced technology for consumers, to smooth the path for technical innovation in the broadband industry, and to ease the burden of cable rate regulation on operators.⁴⁸ Nothing in the record shows that Comcast's different prices for converters disserve any of these goals or are predatory. On the present record, we see no rational basis for the Cities' decisions. Accordingly, we grant Comcast's appeal of the rate orders of the Cities on this issue.

⁴⁰ 47 CFR § 76.923(h); *TCI of Richardson, Inc.*, 13 FCC Rcd 21690, 21693 (1998) ¶ 8; *Implementation of Sections of the Cable Television Consumer Protection Act of 1992*, 9 FCC Rcd 1164, 1193-94 (1993) ¶ 54.

⁴¹ 47 U.S.C. § 543(a)(7)(A).

⁴² See, e.g., McKinney Appeal, Attachment B (Letter from C2 Consulting Services, Inc., to Mr. Keith Rinehart, City of Bedford, *et al.*, dated May 2, 2003) at 2 (\$9.67), Attachment C (Letter from Robbin Pepper, Comcast Cable Commun., Inc., to Ms. Debra Wallace, City of McKinney, dated May 20, 2003) at 19 (\$9.64).

⁴³ See, e.g., McKinney Appeal, Attachment D (Memorandum from Connie Cannady, C2 Consulting Services, Inc., to Cable Coalition Members, dated November 16, 2003) at 2.

⁴⁴ See, e.g., McKinney Appeal, Attachment A (City of McKinney, Texas, Ordinance No. 2003-12-116) at 3, § 3, ¶ 3a.

⁴⁵ *Implementation of Section 309(j) of the Telecommunications Act of 1996*, 11 FCC Rcd 6778, 6782 (1996) ¶ 8, *Implementation of Section 309(j) of the Telecommunications Act of 1996*, 11 FCC Rcd 15097, 15100 (1996) ¶ 9.

⁴⁶ 47 C.F.R. § 76.923.

⁴⁷ See, e.g., Allen Response at 5-7; DeSoto Response at 5-7.

⁴⁸ *Implementation of Section 301(j) of the Telecommunications Act of 1996: Aggregation of Equipment Costs by Cable Operators*, 11 FCC Rcd 6778, 6778-79 (1996) ¶ 2.

C. The Cities' Rejection of Comcast's Form 1205s

20. Cable operators complete FCC Form 1205s and, based on them, franchising authorities review the operators' prices for regulated equipment. The Cities rejected Comcast's Form 1205s in their entirety,⁴⁹ and Comcast has appealed, complaining of two reasons the Cities gave for their rejections. The first is Comcast's failure to produce information that the Cities requested. Comcast, while stating that it provided over 10,000 pages to each City, does not press this complaint with any specificity.⁵⁰ Accordingly, we do not address it further.

21. Comcast's second complaint with the Cities' rejection of the Form 1205s is more substantial. Form 1205 requires financial data about the cost of regulated equipment for a recent twelve-month period. It does allow, however, as little as one month's data to be annualized in the event of "an unusual change in operations, . . . subject to acceptance by the franchising authority or, when applicable, by the FCC."⁵¹

22. Comcast's Form 1205s contained the required financial data, not for all twelve months of fiscal 2002, but for the first ten months of that year, which it then annualized. Comcast explained that for the ten months, the cable systems in question were owned by AT&T Broadband. Comcast then acquired the systems,⁵² disabled AT&T Broadband's information systems,⁵³ and merged 4,000 general ledgers from AT&T Broadband and Comcast into 400 general ledgers for the merged company.⁵⁴ Because of these events, Comcast claims, it would be extremely difficult to generate a full year's data for its Form 1205s. Instead, Comcast annualized the ten months of data from AT&T Broadband. Comcast also avers that "there was not an unusual change in the operations of the cable systems" in the last two months of the year and that its proposed annualization "will not adversely affect former AT&T customers or skew . . . equipment rates."⁵⁵ The Chief of the Commission's Media Bureau, when apprised of this situation, wrote Comcast that, in his view,

"Comcast's proposed annualization of the Form 1205 data for the former AT&T systems is reasonable and not inconsistent with Commission rules and policies. Should this issue arise in the context of any specific rate appeal, the Commission would, of course, have to

⁴⁹ See, e.g., Farmers Branch Appeal, Appendix A (City of Farmers Branch, Texas, Ordinance No. 2748) at 2 § 2.1.

⁵⁰ DeSoto Appeal at 10-11; Flower Mound Appeal at 9-10.

⁵¹ Form 1205 and its instructions are available at <http://www.fcc.gov/formpage.html> (visited March 25, 2004).

⁵² *Comcast Corp. & AT&T Corp.*, 17 FCC Rcd 23246 (2002), *affirmed sub nom. Consumer Federation of America v. FCC*, 348 F.2d 1049 (D.C. Cir. 2003).

⁵³ Allen Appeal, Attachment C (Letter from Robbin Pepper, Comcast Cable Commun., Inc., to Ms. Shelli Seimer, City of Allen, dated May 20, 2003) at 8.

⁵⁴ Letter from Peter H. Feinberg, Dow, Lohnes & Albertson, counsel for Comcast, to W. Kenneth Ferree, Chief, Media Bureau, dated January 31, 2003, at 1.

⁵⁵ Letter from Peter H. Feinberg, Dow, Lohnes & Albertson, counsel for Comcast, to W. Kenneth Ferree, Chief, Media Bureau, dated January 31, 2003, at 1-2. See also Flower Mound Opposition, Exhibit F (Letter from Robbin Pepper, Comcast Cable Commun., Inc., to Mr. Steve Williams, City of Flower Mound, dated December 29, 2003) at 3 ("There were no material changes in the operations of the former AT&T Broadband properties during the six weeks at the end of the fiscal year 2002.").

give consideration to whatever additional information might be adduced in the course of that proceeding.”⁵⁶

23. The Cities pressed Comcast for additional information about Comcast’s post-merger operations in the Cities and about Comcast systems elsewhere in the United States.⁵⁷ When Comcast declined to supply the requested information on grounds of unavailability, burden, or irrelevance,⁵⁸ the Cities found its Form 1205s lacking in evidentiary support and rejected them entirely.⁵⁹

24. We conclude that on the facts of these cases, the Cities had no rational basis to refuse to accept Comcast’s annualized data. The ten months of real data that Comcast supplied covers most of fiscal 2002. Comcast has averred that no change of significance to the price of regulated terminal equipment occurred in its first two months as owner of what had been AT&T Broadband. The Cities have added little more than speculation.⁶⁰ The Cities’ speculation has not convinced us that a laborious gathering and analysis of information, from either what had been AT&T Broadband or from Comcast properties elsewhere, would have produced savings for ratepayers that would prove worth the effort. Finally, the Cities’ consultant complained that the data Comcast supplied may not be “representative of *ongoing* operations” and said that it wanted information that was “representative of *future* costs and operations.”⁶¹ Such information is of little materiality, however, because Form 1205 is primarily retrospective and focuses on past costs, not current or future ones.⁶² For all these reasons, we do not think that the Cities have shown grounds to depart from the general finding of the Chief of the Commission’s Media Bureau that Comcast’s proposed annualization of Form 1205 data for the former AT&T systems is reasonable. Accordingly, we grant Comcast’s appeal on this issue.

⁵⁶ Letter from W. Kenneth Ferree, Chief, Media Bureau, to Peter H. Feinberg, Dow, Lohnes & Albertson, counsel for Comcast, dated February 26, 2003.

⁵⁷ See, e.g., Allen Response, Exhibit C (Letter from C2 Consulting Services, Inc., to Mr. Keith Rinehart, City of Bedford, *et al.*, dated May 2, 2003) at 4-7, Exhibit I (Attachment, titled “Questions and Responses,” to Letter from Robbin Pepper, Comcast Cable Commun., Inc., to Ms. Constance T. Cannady, C2 Consulting Services, Inc., dated April 23, 2003) at 12-13.

⁵⁸ See, e.g., Allen Response, Exhibit I, *supra* note 57, at 13; Colleyville Appeal, Attachment D (Letter from Robbin Pepper, Comcast Cable Commun., Inc., to Ms. Cindy Martin, City of Colleyville, dated January 29, 2003) at 6; Farmers Branch Appeal at 10.

⁵⁹ See, e.g., Farmers Branch Response at 6; McKinney Appeal, Attachment A (City of McKinney, Texas, Ordinance 2003-12-116) at 3, § 3, ¶ 3; McKinney Opposition at 8.

⁶⁰ For example, the Cities’ consultant suggested that “[t]here potentially have been significant changes in the operations of these properties subsequent to the take-over by Comcast.” Farmer’s Branch Appeal, Attachment B (Letter from C2 Consulting Services, Inc., to Mr. Keith Rinehart, City of Bedford, *et al.*, dated May 2, 2003) at 4-5.

⁶¹ See, e.g., Flower Mound Appeal, Exhibit B (Letter from C2 Consulting Services, Inc., to Mr. Keith Rinehart, City of Bedford, *et al.*, dated May 2, 2003) at 3-4 (italics added).

⁶² *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation*, 11 FCC Rcd 388, 424-25 (1995) ¶¶ 89-90. See also FCC Form 1205 Instructions for Determining the Costs of Regulated Cable Equipment & Installation, Schedule A, Lines G4a, G6b, G6c, Schedule D, Step A (requiring use of past costs), available at <http://www.fcc.gov/formpage.html>.

D. Projected Programming Cost Increases

25. In its filings with the Cities of Allen, Colleyville, Flower Mound, Grapevine, and McKinney, Comcast sought higher rates for the BST based on increased costs it had incurred for programming on several channels.⁶³ The Cities requested supporting information, including “actual invoices/correspondence/ notification, which supports the amount directly, or indirectly assigned as well as programming costs by channel.”⁶⁴ Comcast, instead of providing the Cities with the actual information they asked for, gave them, entirely or for the most part, second-hand summaries.⁶⁵ Comcast noted that the information the Cities asked for was proprietary, and there were negotiations about a confidentiality agreement.⁶⁶

26. Comcast’s briefing on this issue is remarkably spare.⁶⁷ It is clear, however, that our rules place on Comcast the burden of proof that its BST rates are lawful.⁶⁸ Our rules also clearly entitle the franchising authority to see proprietary information that is material and relevant.⁶⁹ Here, as in the recent case of *TCI of Pennsylvania, Inc.*,⁷⁰ the cable operator failed to provide information that the franchising authority requested and reasonably believed was necessary for its evaluation of the cable operator’s case. As in that case, here we find that Comcast failed to meet its burden of proof with respect to its projected programming cost increases, and we deny its appeal on this issue.

E. Inflation Factor

27. Cable operators complete FCC Form 1240 and, based on it, franchising authorities set the cable operators’ prices for the BST. The rate orders of the Cities of Allen, Colleyville, Flower Mound, Grapevine, and McKinney implicitly rejected the inflation factors stated in Comcast’s Form 1240s and substituted new ones proposed by their consultant.⁷¹ In these appeals, Comcast does not challenge the Cities’ right to “refresh” its inflation factors, given the long proceedings before the Cities.⁷² Rather, it

⁶³ See, e.g., Grapevine Appeal at 14-15.

⁶⁴ See, e.g., Grapevine Appeal, Attachment E (Letter from C2 Consulting Services, Inc., to Ms. Melisa Leal, City of Grapevine, dated May 1, 2003) at 3.

⁶⁵ See, e.g., Grapevine Appeal, Attachment E, *supra* note 64, at 3-4; Attachment F (Letter from Connie Cannady, C2 Consulting Services, Inc., to Ms. Jennifer Hibbs, City of Grapevine, dated November 10, 2003) at 1-2; Attachment G (Letter from Robbin Pepper, Comcast Cable Commun., Inc., to Ms. Melise [sic] Leal, City of Grapevine, dated May 20, 2003) at 20-21.

⁶⁶ See, e.g., Grapevine Appeal, Attachment G, *supra* note 65, at 21; Grapevine Response at 10; Grapevine Reply at 5-6.

⁶⁷ In Comcast’s Appeals and Replies, it devotes barely one page to this issue.

⁶⁸ 47 C.F.R. § 76.937.

⁶⁹ 47 C.F.R. § 76.938.

⁷⁰ *TCI of Pennsylvania, Inc.*, *supra* note 32, at ¶ 14.

⁷¹ See, e.g., Allen Appeal, Exhibit G (Letter from Connie Cannady, C2 Consulting Services, Inc., to Ms. Jennifer Jung, City of McKinney, and Ms. Shelli Siemer, City of Allen, dated November 10, 2003), at 1-2.

⁷² Allen Appeal at 15-16 & n.49. Comcast filed its Form 1240s with the Cities on or about March 1, 2003, and the Cities ruled on them in December of that year and January 2004. Allen Appeal, Exhibit A (City of Allen, Collin
(continued...))

challenges how the Cities did the refreshing. Specifically, Comcast claims that the Cities disregarded the Commission rule, which requires use of the latest published inflation factor,⁷³ and instead used a “blended rate using the fourth quarter 2002 and the first and second quarter 2003 inflation factors.”⁷⁴ The Cities admit that they departed from our rule, but argue that a blended rate “seems more reasonable.”⁷⁵ The Cities’ consultant also noted that the Commission has departed from its rule and used a blended rate in at least one past case.⁷⁶

28. We understand the Cities’ desire to reach what it believes to be a reasonable decision. Nevertheless, our rule is clear and is binding on local franchising authorities. Our rules also allow for a true-up in the next Form 1240s that Comcast files. We grant Comcast’s appeal on this issue from the rate orders of the Cities of Allen, Colleyville, Flower Mound, Grapevine, and McKinney and we suggest that, on remand, the Cities use our latest published inflation factor.

F. Interest Recovery

29. In Colleyville, Flower Mound and Grapevine, Comcast’s predecessor could lawfully have increased its BST rate in June 2002 but chose to delay doing so until July.⁷⁷ The Cities acknowledge Comcast’s right to later recover the one month of foregone revenues. The Cities’ rate orders, however, deny Comcast interest on the foregone revenues. Comcast claims that this denial violates our decision in *CoxCom, Inc.*, 17 FCC Rcd 7931 (2002), *application for review denied*, 18 FCC Rcd 6941 (2003).⁷⁸ The Cities disagree, citing our *Thirteenth Order on Reconsideration*.⁷⁹

30. As with the issue of its projected programming cost increases, Comcast’s briefing is remarkably spare.⁸⁰ The import of the decisions cited in the preceding paragraph, at least for the present case, is that a cable operator is not entitled to earn interest on rate increases that it chose voluntarily not to

(...continued from previous page)

County, Texas, Ordinance No. 2240-12-03), at § 1, ¶ 3 at 1 & at 3; Flower Mound Appeal, Exhibit A (Town of Flower Mound, Texas, Ordinance No. 01-04), at §1.3 at 2 & at 4; McKinney Appeal, Exhibit A (City of McKinney, Texas, Ordinance No. 2003-12-116), at § 1.3 at 1 & at 4.

⁷³ Although neither Comcast nor the Cities cites to the rule, they appear to refer to Form 1240, Module C, available at <http://www.fcc.gov/formpage.html> (visited March 30, 2004).

⁷⁴ Allen Appeal at 16 & n.50, quoting Exhibit G thereto (Letter from Connie Cannady, C2 Consulting Services, Inc., to Ms. Jennifer Jung, City of McKinney, and Ms. Shelli Siemer, City of Allen, dated November 10, 2003), at 2.

⁷⁵ Allen Response at 11.

⁷⁶ Allen Appeal, Exhibit F (Letter from C2 Consulting Services, Inc., to Ms. Debra Wallace, City of McKinney, & Ms. Shelli Seimer, City of Allen, dated May 5, 2003) at 5, citing *Paragon Cable*, 12 FCC Rcd 23718, 23721 (1997) ¶ 10.

⁷⁷ See, e.g., Colleyville Appeal, Attachment E (Letter from C2 Consulting Services, Inc., to Ms. Cindy Martin, City of Colleyville, dated November 7, 2003) at 4-5.

⁷⁸ Flower Mound Appeal at 15-16; Flower Mound Reply at 7.

⁷⁹ Flower Mound Opposition at 11-12, citing *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation*, 11 FCC Rcd 388, 421 (1995) ¶¶ 79-80.

⁸⁰ In Comcast’s Appeals and Replies, it devotes slightly more than one page to this issue.

take.⁸¹ Comcast asserts such a claim in this appeal, however. Accordingly, we dismiss Comcast's appeal from the rate orders of the Cities of Colleyville, Flower Mound and Grapevine on this issue.

G. The Timing of Comcast's Rates

31. Comcast filed its Forms with the Cities of Colleyville and Flower Mound on or about March 1, 2003, to be effective from June 2003 through May 2004.⁸² Comcast's Form 1240s did not state any Operator Selected Rate ("OSR") for the BST.⁸³ Several months then passed during which the Cities asked for the OSR and much other information. Comcast supplied some of that information, but stated an OSR only in late October 2003.⁸⁴ The Cities issued the rate orders under review here on in January and February 2004.⁸⁵ The Colleyville rate order stated that the rates it approved would be "effective December 1, 2003, for the period of one year."⁸⁶ The Flower Mound rate order stated that the rates it approved would be effective "until further order of the Town"⁸⁷ and described certain equipment rates as being effective "January 2004 through January 2005."⁸⁸

32. Commission rules generally provide that, if a franchising authority has taken no action within the 90-day review period, then the cable operator's proposed rates may go into effect.⁸⁹ The Cities

⁸¹ *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation*, 11 FCC Rcd 388, 421 (1995) ¶¶ 79 ("To the extent that there is an underestimation of [actual] cost changes, future rates may be increased to permit recovery of the accrued costs plus interest between the date the costs are incurred and the date the operator is entitled to make its next rate adjustment."), 80 ("If the operator elects not to recover these accrued costs with interest on the date the operator is entitled to make its annual rate adjustment, the interest will cease to accrue as of the date the operator is entitled to make the annual rate adjustment, [W]here an operator makes a business decision to delay a rate increase, subscribers are not required to pay for the cost of the delay."). The latter quotation appears with approval in *CoxCom, Inc.*, 17 FCC Rcd 7931, 7932 n.10 (2002) ¶ 3, *application for review denied*, 18 FCC Rcd 6941 (2003).

⁸² *See, e.g.*, Flower Mound Appeal at 16 & Attachment A (Town of Flower Mound, Texas, Ordinance No. 01-04) at 2, § 1.3.

⁸³ *See, e.g.*, Flower Mound Appeal, Exhibit E (Letter from C2 Consulting Services, Inc., to Mr. Steve Williams, Town of Flower Mound, dated November 7, 2003) at 1.

⁸⁴ *See, e.g.*, Flower Mound Opposition, Exhibits C (Letter from C2 Consulting Services, Inc., to Mr. Keith Rinehart, City of Bedford, *et al.*, dated May 2, 2003), D (Letter from Robbin Pepper, Comcast Cable Commun., Inc., to Mr. Steve Williams, City of Flower Mound, dated May 20, 2003), H (Letter from C2 Consulting Services, Inc., to Mr. Steve Williams, Town of Flower Mound, dated November 7, 2003), & I (Letter from Robbin Pepper, Comcast Cable Commun., Inc., to Constance T. Cannady, C2 Consulting Services, Inc., dated June 2, 2003).

⁸⁵ Colleyville Appeal, Attachment A (City of Colleyville TX, Resolution R-04-2308) at 3; Flower Mound Appeal, Exhibit A (Town of Flower Mound, Texas, Ordinance No. 01-04) at 4.

⁸⁶ Colleyville Appeal, Attachment A (City of Colleyville TX, Resolution R-04-2308) at 2 § 7.

⁸⁷ Flower Mound Appeal, Attachment A (Town of Flower Mound, Texas, Ordinance No. 01-04), at 3 §§ 3.1, 3.2.

⁸⁸ Flower Mound Appeal, Attachment A, Exhibit A (COMCAST Cable Services, 2003 Form 1205 Filing, January 2004 through January 2005).

⁸⁹ 47 C.F.R. § 76.933(g)(2).

of Colleyville and Flower Mound took no action by that date (in this case, by June 1, 2003).⁹⁰ Our rules also generally provide that operators such as Comcast may not change a rate more than once a year.⁹¹ The Cities had no authority to prolong the effectiveness of any Comcast rate for more than one year. They seek to justify their postponement of Comcast's rates by noting that Comcast had omitted the OSR from its March 2003 filings.⁹² We have recently held, however, that such postponement or tolling occurs only if the franchising authority decides that the cable operator's filing is incomplete and demands that the cable operator complete its Forms and declare an OSR.⁹³ The Cities did not do that and therefore did not effectively toll the effectiveness of Comcast's rates. To the extent that the Cities of Colleyville and Flower Mound's rate orders purported to prolong any Comcast rate in effect for more than one year – either a rate that changed in the wake of Comcast's March 1, 2003, filing or a rate that did not – the Cities exceeded their authority.⁹⁴ Accordingly, we grant the appeal of Comcast from the rate order of the Cities of Colleyville and Flower Mound to the extent that they purported to continue any Comcast rate in effect for more than one year.

V. ORDERING CLAUSES

33. Accordingly, **IT IS ORDERED** that the Requests for Emergency Stay of Local Rate Order filed by Comcast of California/Colorado/Illinois/Indiana/Texas, Inc., in CSB-A-0699 and CSB-A-0700, and by Comcast Cablevision of Dallas, Inc., in CSB-A-0698 **ARE DISMISSED**.

34. **IT IS FURTHER ORDERED** that the Appeals of Local Rate Orders filed by Comcast of California/Colorado/Illinois/Indiana/Texas, Inc., in CSB-A-0699, CSB-A-0700, and CSB-A-0701, by Comcast Cablevision of Dallas, Inc., in CSB-A-0698, and by Comcast of Texas, Inc., CSB-A-0705, **ARE GRANTED IN PART AND DISMISSED IN PART** and **ARE REMANDED** for further consideration consistent with this Order.

35. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules. 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

John B. Norton
Deputy Chief, Policy Division, Media Bureau

⁹⁰ Comcast was entitled to effect its proposed rates on that date, but it appears that it did so only months later. Flower Mound Appeal at 17; Flower Mound Opposition at 2-3.

⁹¹ 47 C.F.R. § 76.922(e)(1).

⁹² See, e.g., Flower Mound Opposition at 12-13.

⁹³ 47 C.F.R. § 76.933(g). See *Comcast Cable Communications, Inc.*, 19 FCC Rcd 6, 10-12 (2004) ¶¶ 14-18; *Frontiervision Operating Partners*, 18 FCC Rcd 20416, 20421 (2003) ¶ 15.

⁹⁴ Comcast claims that the only rates that it changed in its March 1, 2003, filing were for digital additional outlets, which it asserts (perhaps correctly, see *supra* ¶¶ 15-17) are unregulated, and for its HDTV-capable converters, which it was offering for the first time. Flower Mound Appeal at 17; Flower Mound Reply at 7.